

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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*
UNITED STATES OF AMERICA *
*
v. * 12-CR-144-01-PB
* March 3, 2014
* 11:05 a.m.
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HIEU NGO *
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TRANSCRIPT OF WAIVER OF INDICTMENT
AND PLEA TO INFORMATION HEARING
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For the Government: Arnold H. Huftalen, AUSA
U.S. Attorney's Office

For the Defendant: Michael J. Connolly, Esq.
Hinckley, Allen & Snyder

Probation: Sean Buckley

Interpreter: Huan Dao

Court Reporter: Susan M. Bateman, LCR, RPR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1453

1 P R O C E E D I N G S

2 (Deputy Clerk swears in the Interpreter)

3 THE COURT: Court is now in session and has
4 for consideration today a waiver of indictment and a
5 plea to an Information in criminal case number
6 12-CR-144-01-PB, United States of America versus Hieu
7 Minh Ngo.

8 THE COURT: First, I apologize for the delay.
9 I had something I had to do for a telephone conference
10 at noon, and I had to finish that.

11 Sir, I understand you intend to plead guilty
12 to an Information charging you with three offenses.

13 The first one is wire fraud, the second is
14 identity fraud, and the third is access device fraud.

15 Are you intending to plead guilty to those
16 charges?

17 THE DEFENDANT: Yes.

18 THE COURT: I'm going to ask you some
19 questions. You need to speak your answers to me
20 because what we say is being recorded. You also need
21 to respond truthfully, so I'll ask the clerk to place
22 you under oath now.

23 (Deputy Clerk swears in the defendant)

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: Twelfth grade.

1 THE COURT: Can you read in your own
2 language?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: There are a couple of documents
5 that are important here. I want to make sure that an
6 interpreter has read them to you.

7 The first document is called an Information,
8 that is the document that has the charges against you.
9 Did an interpreter read that document to you?

10 THE DEFENDANT: Yes.

11 THE COURT: And the second document is called
12 an acknowledgment and waiver of rights form. It's the
13 document that you and your attorney have signed -- or
14 excuse me. You may not have signed it yet. Do you
15 have a signed copy? If you haven't yet signed it, let
16 me just ask -- oh, it is signed. Okay.

17 So I have the original that you and your
18 attorney signed. That document has something called
19 Attachment A. So I want to be sure. Has an
20 interpreter read the acknowledgment form and
21 Attachment A to you?

22 THE DEFENDANT: I understand.

23 THE COURT: And do you understand both
24 documents?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: And did you have a chance to talk
2 to your lawyer about all of the documents?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you ever been treated for a
5 mental illness?

6 THE DEFENDANT: Yes.

7 THE COURT: What have you been treated for?

8 THE DEFENDANT: I heard voices in my head.

9 THE COURT: When did you last hear voices?

10 THE DEFENDANT: Since 2012.

11 THE COURT: Have you heard them after 2012,
12 or was 2012 the last time you heard voices?

13 THE DEFENDANT: Since 2012 up to today, your
14 Honor.

15 THE COURT: All right. And have you been
16 receiving any treatment for these voices you've been
17 hearing?

18 THE DEFENDANT: Yes, your Honor, but I still
19 don't know what's the cause of those voices.

20 THE COURT: All right. Let's talk about what
21 treatment you're receiving. Are you taking any
22 medicine for that?

23 THE DEFENDANT: Yes, but it did not help.

24 THE COURT: All right. Do you know what
25 medicine -- are you currently taking a medicine for

1 it?

2 THE DEFENDANT: No, your Honor. I stop
3 because it cause me tired and it did not help.

4 THE COURT: All right. Are you taking any
5 medicine at all today?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Have you received any other
8 mental health treatment for your condition?

9 THE DEFENDANT: Well, when I was in Vietnam I
10 was in a hospital and they checked me with the MRI.

11 THE COURT: How about now? Are you receiving
12 any treatment at all for it while you're here?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: How often do you hear voices now?

15 THE DEFENDANT: All the time, your Honor, but
16 it gets worse. When everything is quiet, it gets
17 worse.

18 THE COURT: Can you tell me what the voices
19 say to you?

20 THE DEFENDANT: I hear voices, like haunted
21 stuff, ghosts, evil. Sometimes they chase me.

22 THE COURT: Do you have any other symptoms of
23 mental illness?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Mr. Connolly, auditory

1 hallucinations are a symptom of potentially
2 significant mental illness. You have been interacting
3 with your client. Have you seen anything in your
4 interactions with him that would call into question
5 his ability to enter a guilty plea today?

6 MR. CONNOLLY: No, I haven't, your Honor. I
7 have met with Mr. Ngo on more than ten occasions.
8 I've spent several hours with Mr. Ngo. I've had
9 extensive communications with his sister. His
10 sister's name is Eden Ngo. Eden Ngo is fluent in
11 English.

12 Mr. Ngo himself actually speaks English
13 fairly well. He's able to understand me in English
14 and he responds to me in English.

15 Neither Mr. Ngo nor his sister, Eden Ngo,
16 have ever advised me of any mental illness on the part
17 of Mr. Ngo at all. I am surprised to hear his
18 responses this morning to your questions.

19 THE COURT: All right. Thank you.

20 Mr. Ngo, in order to waive your rights --
21 your constitutional rights here, you have to be able
22 to provide your lawyer with -- you have to be able to
23 assist your lawyer in providing you with a defense and
24 you have to be competent and to understand the rights
25 that you're giving up by pleading guilty.

1 I want to ask you a few questions about these
2 issues so that I can try to make an assessment of
3 whether the voices you're hearing in any way are
4 affecting your judgment today. Do you understand?

5 THE DEFENDANT: Okay.

6 THE COURT: Have these voices given you any
7 instruction about what you are supposed to do with
8 respect to the charges against you?

9 THE DEFENDANT: You mean it harms me or --

10 THE COURT: Does it tell you to do something
11 about the charges, to plead guilty, to go to trial?
12 Are the voices in any way specific to the charges
13 against you?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Are the voices in any way -- do
16 they concern the crimes that you committed?

17 THE DEFENDANT: Basically the voices cause me
18 headaches and fatigue, but ever since I did this crime
19 I did a lot of thinking and that's why my head is
20 always in pain.

21 THE COURT: Let me ask you some questions
22 about the court proceedings here today. I'm the
23 judge. What does a judge do in a case like yours?

24 THE DEFENDANT: The judge will make a
25 judgment toward my crime and give me the sentence.

1 THE COURT: Do you think that as the judge
2 that I'm on your side or the prosecutor's side, or am
3 I impartial and not related to either side?

4 THE DEFENDANT: Impartial.

5 THE COURT: Mr. Connolly, sitting beside you,
6 is your lawyer. What's his job?

7 THE DEFENDANT: He would help me about my
8 case and also help me get a fair sentence.

9 THE COURT: All right. And the person
10 sitting across at the other table, Mr. Huftalen --
11 could you stand up, Mr. Huftalen. He's the
12 prosecutor. What does the prosecutor do?

13 THE DEFENDANT: He provide all the documents
14 proving that I'm guilty.

15 THE COURT: All right. You have told me you
16 want to plead guilty today, and one of the things you
17 would be giving up by pleading guilty is your right to
18 have a jury trial. A jury -- they would sit in that
19 box over there, and if there were a trial they would
20 be your jury. What does a jury do at a trial?

21 THE DEFENDANT: I think that they will
22 consider what is the fair sentence for my crime.

23 THE COURT: They would figure out a sentence
24 for your crime? They would also -- you've told me
25 today you want to plead guilty. But if you wanted to

1 have a trial instead, the jury would determine whether
2 you committed the crime or not. Do you understand
3 that?

4 THE DEFENDANT: I understand.

5 THE COURT: It's up to you to decide whether
6 you want to have a trial or whether you want to plead
7 guilty. No one can make you plead guilty. It's
8 totally up to you. Do you understand that?

9 THE DEFENDANT: I understand.

10 THE COURT: The defendant appears to be lucid
11 and competent to me. He understands the role that
12 each of the central players have in the criminal
13 justice system.

14 Mr. Connolly has represented to me that he
15 has seen no signs of impairment which would affect the
16 defendant's ability to participate in the process.

17 Nevertheless, I am concerned whenever a
18 defendant claims to hear voices. While this is not
19 uncommon, it can be a sign of significant mental
20 illness.

21 What I propose to do is proceed with the plea
22 colloquy here. And if I otherwise find his answers
23 acceptable, I will provisionally accept the plea.

24 But I am going to ask to appoint Dr.
25 Drukteinis to complete a competency evaluation of the

1 defendant and provide that to me prior to sentencing.
2 If the evaluation raises issues that require further
3 investigation, I will undertake it at that time.

4 Did you receive any mental health treatment
5 or were you prescribed my medication for the voices
6 while you were here in the United States?

7 THE DEFENDANT: Yes, your Honor. And I took
8 it for a couple weeks or so, but I had to stop because
9 it cause me to be very tired.

10 THE COURT: All right.

11 Mr. Connolly, I would ask you to endeavor to
12 obtain the defendant's U.S. mental health records so
13 that they can be made available to Dr. Drukteinis, or
14 whoever I ultimately appoint here, so that we can
15 facilitate the examination.

16 MR. CONNOLLY: I will, your Honor.

17 THE COURT: Mr. Huftalen.

18 MR. HUFTALEN: I just wanted to share with
19 your Honor that when the defendant was arrested in
20 February of 2013 in Guam, he appeared in court there,
21 was appointed a federal defender at that point, dealt
22 with agents, and there was no indication at that point
23 by any of the parties involved that the defendant
24 lacked the ability to communicate and understand what
25 was going on.

1 Since then I have met with the defendant,
2 along with defense counsel, and Special Agent Matt
3 O'Neil, and no one in that meeting noticed or
4 expressed concerns with respect to Mr. Ngo's ability
5 to comprehend what was going on.

6 Mr. Ngo is facing additional charges in the
7 District of New Jersey for computer hacking. He has
8 been writted to New Jersey. He appeared on that case,
9 has met with agents and government lawyers, and I
10 believe Mr. Connolly, in New Jersey. No one noticed
11 any issues there.

12 He has also traveled to the Southern District
13 of New York and met with agents and prosecutors there
14 because he has relevant information of an evidentiary
15 value to a criminal prosecution in the Southern
16 District, and none of the agents or prosecutors in the
17 Southern District of New York have expressed to me
18 that they noticed any inability of Mr. Ngo to
19 understand who the players were, what their respective
20 roles were.

21 Not that that's dispositive of anything, but
22 I wanted to share that with you and put that on the
23 record.

24 THE COURT: All right. Thank you.

25 You've told me that an interpreter has read

1 this Information to you; that's the charge. The
2 charges in that Information are felony charges, and
3 you have a right to have those charges presented to a
4 grand jury to see whether an indictment would be
5 returned against you.

6 A grand jury is a group of citizens, at least
7 16 and not more than 23. The prosecutor would present
8 his evidence to the grand jury and the grand jury
9 would have to determine whether there was probable
10 cause to believe you committed these crimes. The
11 grand jury could not return indictments against you
12 unless at least twelve members found probable cause.
13 You could not be held for trial unless a grand jury
14 returned an indictment against you.

15 Let me ask my clerk. Do I have a separate
16 waiver of indictment, or is that embodied in the
17 acknowledgment and waiver of rights?

18 (Deputy Clerk confers with the Court)

19 Okay. So you have signed a document telling
20 me you're giving up your right to have this matter
21 proceed to the grand jury. If I accept your waiver,
22 the case will proceed against you on the Information
23 just as though you had been indicted.

24 Do you understand what I said to you about
25 the indictment?

1 THE DEFENDANT: I do.

2 THE COURT: And do you wish to give up your
3 right to have the matter presented to the grand jury?

4 (Attorney Connolly consults with the defendant)

5 THE COURT: Do you agree to waive your right
6 to have the matter presented to the grand jury?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: I find that the defendant has
9 knowingly, voluntarily and intelligently given up his
10 right to have the matter presented to the grand jury.
11 The case will proceed against him on the Information
12 just as though he had been indicted.

13 Now, you have a right to a trial on these
14 charges. That's what I was talking to you about
15 before. You have a right to a trial, and you've told
16 me you want to give up that right.

17 If the case had gone to a trial, you wouldn't
18 have to prove your innocence. Instead, it would be up
19 to the government to prove your guilt beyond a
20 reasonable doubt. Do you understand?

21 THE DEFENDANT: I understand.

22 THE COURT: To prove your guilt the
23 government has to prove certain things, and I want to
24 review what the government has to prove with you.
25 These are in the attachment that was read to you.

1 So the first charge is wire fraud. To prove
2 wire fraud, the government would have to prove first
3 that there was a scheme substantially as charged in
4 the Information.

5 Second, he would have to prove that the
6 scheme involved the misrepresentation or concealment
7 of a material fact or matter, or the scheme involved a
8 scheme to obtain money or property by means of false
9 or fraudulent pretenses involving a false statement
10 concerning a material matter.

11 Third, the prosecutor would have to prove
12 that you knowingly and willfully participated in the
13 scheme with the intent to defraud.

14 And fourth, he would have to prove that for
15 the purpose of executing the scheme, or in furtherance
16 of it, that you caused an interstate or foreign wire
17 communication to be used, or it was reasonably
18 foreseeable that for the purpose of executing the
19 scheme that an interstate or foreign wire
20 communication would be used on or about the dates
21 alleged in the Information.

22 This is what would have to be proved before
23 wire fraud could be established. Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: The second charge is identity

1 fraud. To be guilty of that charge the prosecutor
2 would have to prove first that you acted knowingly.

3 Second, he would have to prove that you
4 transferred, possessed or used without lawful
5 authority a means of identification of another person.

6 Third, he would have to prove that you did so
7 with the intent to commit or to aid and abet or in
8 connection with other unlawful activity.

9 That's what would have to be proved to prove
10 the second charge, identity fraud. Do you understand?

11 THE DEFENDANT: I do.

12 THE COURT: The third charge, access device
13 fraud, involves the following things that the
14 prosecutor would have to prove:

15 First, that you used or trafficked in access
16 devices, including but not limited to payment card
17 numbers, bank account numbers, and bank routing
18 numbers and other associated data.

19 Second, that you used and trafficked in them
20 without authorization and thereby obtained something
21 of value of at least \$1,000 during a one year period.

22 Third, that you must have acted knowingly,
23 willfully and with intent to defraud.

24 And fourth, that your conduct affected
25 interstate or foreign commerce.

1 That's what has to be proved to prove access
2 device fraud. Do you understand?

3 THE DEFENDANT: I do.

4 THE COURT: Mr. Huftalen, could you make a
5 brief proffer of the evidence supporting your charges?

6 MR. HUFTALEN: I will, your Honor. I have a
7 fairly lengthy proffer which Mr. Ngo has reviewed -- I
8 know because he's asked me to make some minor
9 changes -- but I will try to make it as brief as I
10 can.

11 THE COURT: Well, let me ask you, is it in
12 writing?

13 MR. HUFTALEN: It's not in writing in a form
14 that I could pass up to the Court. It has a number
15 of --

16 THE COURT: I have a telephone conference
17 that I have to hold at 12:00 o'clock. So if we don't
18 finish by five of, I'm going to have to take a break
19 until after that conference which could be over an
20 hour. Okay?

21 MR. HUFTALEN: Understood. Thank you.

22 In the event this case were to proceed to
23 trial, the government would prove beyond a reasonable
24 doubt the following:

25 Between 2007 and the defendant's arrest in

1 February of 2013, he ran a business from his home in
2 Vietnam through which he sold personally identifiable
3 information, which is referred to as PII, which can,
4 and in this case did, include individuals' names,
5 addresses, Social Security numbers, dates of birth,
6 places of work, duration of work, dates of employment,
7 state driver's license numbers, mother's maiden names,
8 bank account numbers, bank routing numbers, e-mail
9 account names and addresses and other account
10 passwords.

11 He also sold stolen payment card numbers for
12 credit cards and debit cards, and he also sold access
13 through websites that he ran to more than 1,300
14 criminals around the world to obtain PII of millions
15 of United States citizens which was stored in
16 databases in the United States.

17 Mr. Ngo sold what are referred to in the
18 carding industry, which is credit card fraud industry,
19 "fulls", F-U-L-L-S or F-U-L-L-Z. Those are slang
20 terms that are used to describe a package of PII that
21 includes a number of the things that I just said but
22 also includes, among others, Social Security numbers.

23 "Fulls" are used by carders to take over
24 identities of people in order to engage in various
25 crimes, including bank fraud, credit card fraud, ATM,

1 bust-out fraud, and the filing of fraudulent United
2 States personal income tax returns requesting refunds.

3 Much of the information in "fulls", including
4 but not limited to Social Security numbers,
5 constitutes means of identification, as that term is
6 defined at 18 U.S. Code 1028(d)(7).

7 During the course of the investigation
8 conducted by an undercover United States Secret
9 Service agent in New Hampshire, it was learned that
10 Mr. Ngo had advertised that he had more than one half
11 million "fulls" for sale.

12 Mr. Ngo sold "fulls" and access to PII
13 through websites that he ran and required his
14 customers to pay him through Liberty Reserve.

15 Liberty Reserve is an anonymous offshore
16 payment means which at the time was located in Costa
17 Rica.

18 From 2010 to 2013 Mr. Ngo acquired, offered
19 for sale and sold "fulls" from an inventory that he
20 maintained on his website of more than 150,000
21 "fulls". He repeatedly acquired and transferred to
22 others "fulls" of individuals in the United States,
23 including individuals located in New Hampshire.

24 The bank account information contained in
25 some of those "fulls" included branches of banks

1 located in New Hampshire. Mr. Ngo sold and
2 transferred "fulls" into the District of New
3 Hampshire.

4 Mr. Ngo also sold and trafficked in stolen
5 payment card data from credit cards and debit cards.
6 That information typically contained the victim
7 account holders' payment card numbers, expiration
8 date, account holder name, account holder address and
9 phone number.

10 Mr. Ngo transferred to others stolen payment
11 card data of account holders in the District of New
12 Hampshire.

13 Additionally, and perhaps most significantly,
14 the evidence would show that Mr. Ngo administered
15 websites whereby he allowed his more than 1,300
16 customers, both domestic in the U.S. and from many
17 countries around the globe, to access a database of
18 PII in the United States.

19 He would charge his clients through their
20 Liberty Reserve accounts, and they would pay him
21 through his Liberty Reserve account.

22 With respect to one database in particular,
23 Mr. Ngo allowed his clients to make more than three
24 million queries of U.S. citizens' PII.

25 That database which contained PII of

1 approximately 200 million U.S. citizens was located in
2 Ohio.

3 The name of the company that owned that
4 database was U.S. Info Search. U.S. Info Search had a
5 contractual arrangement with a California company
6 named Court Ventures whereby customers of Court
7 Ventures had access to the U.S. Info Search data as
8 well as Court Ventures' data, and vice versa.

9 Mr. Ngo contracted with Court Ventures
10 fraudulently representing that he was a private
11 investigator from Singapore, and through that contract
12 with Court Ventures was able to make available to his
13 clients access to the U.S. Info Search database
14 containing 200 million U.S. citizens' information.

15 Over an 18-month period, approximately 3.1
16 million queries were made. At this point the
17 government does not know how many U.S. citizens' PII
18 was compromised, although that information will be
19 available in the near future. And we don't know
20 because the way the process worked was a bad actor
21 could type in the name of an individual and a state --

22 THE COURT: I've got to be concerned about
23 time. How much more do you have?

24 MR. HUFTALEN: I'm getting close to the end.

25 THE COURT: All right.

1 MR. HUFTALEN: During the course of his
2 conduct within the dates said in the Information, Mr.
3 Ngo sent "fulls" to New Hampshire. He took payment
4 for "fulls" from New Hampshire. He sent means of
5 identification to New Hampshire and to others. There
6 were 45,000 deposits from his customers into this
7 Liberty Reserve account totalling more than
8 \$1.9 million.

9 The U.S. Secret Service has conducted
10 investigations into many of his customers, all of whom
11 have stated that they only obtained the information
12 from Mr. Ngo to engage in criminal fraud.

13 The evidence would establish that at the time
14 Mr. Ngo knew that he was providing the information for
15 others to engage in fraud.

16 That, your Honor, I believe would be
17 sufficient to allow a jury to find the defendant
18 guilty of the three charges listed in the Information.

19 THE COURT: Do you disagree with anything
20 that the prosecutor has said about your crimes?

21 MR. CONNOLLY: Your Honor, I had a chance to
22 review the factual proffer with Mr. Ngo before the
23 proceeding began today, and I would like to make the
24 following clarifications.

25 Mr. Ngo was in fact aware that the people who

1 purchased the personal identifying information from
2 him intended to use it for fraudulent purchases. He,
3 however, was not aware that the information was being
4 used to commit what Mr. Huftalen described as ATM
5 fraud, nor was Mr. Ngo aware that the information
6 would be used to commit tax fraud or used for the
7 submission of fraudulent tax returns.

8 Mr. Huftalen indicated that the defendant
9 allowed his clients to conduct more than three million
10 queries on the U.S. database which he described. Mr.
11 Ngo was not aware of the number of queries that were
12 conducted by his clients. He doesn't dispute the
13 number. He just simply did not have that knowledge.

14 Furthermore, Mr. Huftalen described that
15 there was information concerning 200 million U.S.
16 citizens on the U.S. database. Mr. Ngo was not aware
17 of the number of U.S. citizens whose information was
18 maintained on the database.

19 With those clarifications, Mr. Ngo agrees to
20 the facts presented by Mr. Huftalen.

21 THE COURT: Do you agree with what your
22 lawyer said?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You face a maximum possible
25 prison term of 20 years on the first count, that is,

1 the wire fraud count; 15 years on Count 2; and 10
2 years on Count 3. Count 2 is the identity fraud and
3 Count 3 is the access device fraud. Do you
4 understand?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: You could be fined up to twice
7 the gross gain to you resulting from your offense or
8 twice the gross loss resulting from your offense,
9 whichever is greater. Do you understand?

10 THE DEFENDANT: I understand.

11 THE COURT: You could be sentenced to
12 supervised release of up to three years on each count.
13 And if you violate supervised release, you could be
14 sent back to prison. Do you understand?

15 THE DEFENDANT: I understand.

16 THE COURT: I'm not going to have time to
17 finish. I apologize.

18 This is a telephone conference of the
19 Executive Committee of the Judicial Conference, which
20 is the governing committee of the Judicial Conference.
21 It's an emergency telephone call. I have to take it.
22 It has to start at 12:00 o'clock.

23 I'll let you know when we can come back and
24 finish.

25 (RECESS)

1 THE COURT: All right. Let's pick up where
2 we left off. I reviewed with you the possible maximum
3 penalties that you face, but when I sentence you I
4 will use something called the Sentencing Guidelines to
5 help determine your sentence. Have you discussed in
6 general with your lawyer how the Sentencing Guidelines
7 may apply in this case?

8 THE DEFENDANT: Yes.

9 THE COURT: So when I sentence you, I will
10 use those guidelines to determine a guideline
11 sentencing range. That's a range of months. I will
12 then treat the guidelines as advisory. So I could
13 sentence you within that range of months, but I could
14 sentence you above it or I could sentence you below
15 it. Do you understand?

16 THE DEFENDANT: I understand.

17 THE COURT: By pleading guilty, you're giving
18 up certain constitutional rights that you have.

19 You have a right to a trial. That would be
20 in front of the jury. The jury would consist of
21 twelve people. All twelve people would have to find
22 you guilty beyond a reasonable doubt; otherwise you
23 could not be found guilty.

24 You could have an attorney appointed for you
25 at no cost if you could not afford an attorney. You

1 could bring witnesses into court and have them testify
2 for you. You could testify if you wanted to. If you
3 wanted instead to remain silent, you could do that,
4 and I would tell the jury it could not hold your
5 silence against you. You could be present throughout
6 the trial and you could have your lawyer cross-examine
7 any witnesses who testify against you.

8 By pleading guilty, you're giving up all of
9 these rights. Do you understand that?

10 THE DEFENDANT: I understand.

11 THE COURT: If I accept your guilty plea,
12 there won't be any trial. The only thing that will be
13 left is for me to sentence you. Do you understand
14 that?

15 THE DEFENDANT: I understand.

16 THE COURT: Did anyone threaten you in an
17 effort to try to get you to plead guilty?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: May I see counsel at sidebar
20 briefly?

21 (SIDEBAR)

22 (THIS PORTION OF THE RECORD IS ORDERED UNDER
23 SEAL BY THE COURT)

24 (CONCLUSION OF SIDEBAR)

25 THE COURT: Has anyone made any promises to

1 you to try to get you to plead guilty other than as
2 set forth in the March 3rd letter to your lawyer from
3 Mr. Huftalen?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Are you satisfied with the legal
6 advice you've received from your attorney?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: This is the last chance you have
9 to change your mind. Do you feel you've had enough
10 time to think about your decision to plead guilty?

11 THE DEFENDANT: I want to plead guilty.

12 THE COURT: You told me that an interpreter
13 has read the charges to you in the Information, so I
14 won't have him read it to you again unless you want me
15 to. Do you want me to read the charges to you again?

16 THE DEFENDANT: I think I understood
17 everything, your Honor.

18 THE COURT: I'll take your pleas now.

19 As to Count 1 of the Information charging you
20 with the offense of wire fraud, how do you plea to
21 that charge, guilty or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: As to Count 2 charging you with
24 the offense of identification fraud, how do you plead
25 to that charge, guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: And as to Count 3 charging you
3 with fraud in connection with access devices, how do
4 you plead to that charge, guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: Having questioned the defendant
7 and his counsel on the offered pleas of guilty, the
8 defendant and his counsel having informed the Court
9 that they have conferred concerning the offered pleas
10 of guilty, and the Court having observed the defendant
11 making his answers, his demeanor and manner while
12 answering questions, his apparent intelligence and his
13 attitude, and the Court having observed that the
14 defendant does not appear to be under the influence of
15 any medication, drug or other substance which may
16 affect his judgment in any manner, the Court finds
17 that the pleas of guilty of the defendant have a
18 factual basis, are free of any coercive influence of
19 any kind, are competently and voluntarily made with
20 full knowledge of the charges against him and the
21 consequences of his pleas, that there have been no
22 promises of any kind made to him apart from the
23 statements set forth in the written plea agreement
24 which has been filed with the court, and no threats or
25 coercion have been exerted upon him in any manner.

1 I've sat through a fairly lengthy hearing
2 here and had a chance to watch the defendant closely.
3 I've also received factual proffers from the
4 government and defense counsel regarding the
5 defendant's ability to work with lawyers for the
6 government and the defense. And notwithstanding his
7 complaint of having heard voices, I'm satisfied that
8 he is competent. Therefore, I am modifying my prior
9 ruling, and I'm not going to require a competency
10 assessment.

11 If either the attorney for the government or
12 the attorney for the defendant should have any reason
13 hereafter to question the defendant's competency, they
14 must immediately notify the Court and I will determine
15 whether an evaluation is required.

16 I accept the defendant's guilty plea. He's
17 now adjudged guilty of the offenses set forth in
18 Counts 1 through 3 of the Information.

19 Sentencing will take place on June 16th at
20 10:00 a.m.

21 The parties should consult local rules for
22 other dates bearing on the sentencing process.

23 The defendant is currently in custody. I see
24 no reason to change his custody status.

25 Anything else?

1 MR. HUFTALEN: One very minor thing, Judge.

2 Just before you spoke of the defendant's
3 competence you made reference to a signed plea
4 agreement that was filed with the Court, and I know
5 that you intended to say the March 3rd letter and the
6 waiver and the acknowledgment.

7 THE COURT: Right. There isn't a formal plea
8 agreement in the ordinary sense that we recognize it,
9 and I should have treated my findings -- where I said
10 plea agreement, I meant other than the March 3rd
11 letter. Thank you for correcting me.

12 MR. HUFTALEN: Thank you.

13 THE COURT: Anything else?

14 MR. HUFTALEN: Nothing from the government.

15 MR. CONNOLLY: Nothing from the defense.

16 THE COURT: All right. Once again, I
17 apologize for keeping you here. I know it's
18 inconvenient. I try hard not to do it, but I just had
19 to this time.

20 MR. HUFTALEN: Thank you.

21 MR. CONNOLLY: Thank you, Judge.

22 (Conclusion of hearing at 1:30 p.m.)
23
24
25

C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify
that the foregoing transcript is a true and accurate
transcription of the within proceedings, to the best
of my knowledge, skill, ability and belief.

Submitted: 3-7-14

Susan M. Bateman
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CRR